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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

18 JASON FYK,

19 Plaintiff,

20 v.

21 FACEBOOK, INC.,

22
23 Defendant.
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Case No. 4:18-cv-05159-JSW

**PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
HIS RESPONSE IN OPPOSITION TO
DEFENDANT'S MOTION TO DISMISS**

HEARING: FEB. 1, 2019, 9:00 A.M.

BEFORE: JUDGE WHITE

LOCATION: OAKLAND, CT. 5, FL. 2

INTRODUCTION

Pursuant to Federal Rule of Evidence 201, Plaintiff, Jason Fyk (“Fyk”), respectfully requests that the Court take judicial notice of the following materials submitted as exhibits in Fyk’s December 7, 2018, Response in Opposition to Defendant’s November 1, 2018, Motion to Dismiss (“M2D Response”) or cited throughout the M2D Response.

- (1) The full text of Title 47, United States Code, Section 230 (available in the public domain), attached as Exhibit A to the M2D Response and discussed in the declaration of Jeffrey L. Greyber, Esq., attached as Exhibit 1.
- (2) Illustrative screenshots of two of the businesses / pages at issue in this action (once available in the public domain), attached as Exhibit B to the M2D Response and discussed in the declaration of Jeffrey L. Greyber, Esq., attached as Exhibit 1.
- (3) The web materials, news articles, newscasts, and Congressional testimony (all available in the public domain), cited throughout the M2D Response and discussed in the declaration of Jeffrey L. Greyber, Esq., attached as Exhibit 1.

MEMORANDUM OF LAW

A. **LEGAL STANDARDS**

Federal Rule of Evidence 201 provides, in pertinent part, as follows:

(b) Kinds of Facts That May Be Judicially Noticed. The court may judicially notice a fact that is not subject to reasonable dispute because it:

- (1) is generally known within the trial court’s territorial jurisdiction; or
- (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

(c) Taking Notice. The court:

- (1) may take judicial notice on its own; or
- (2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

(d) Timing. The court may take judicial notice at any stage of the proceeding.

1 **B. THE COURT MAY TAKE JUDICIAL NOTICE OF PUBLICLY-AVAILABLE**

2 “Proper subjects of judicial notice when ruling on a motion to dismiss include materials
3 [publicly] available on ... websites.” *Werdebaugh v. Blue Diamond Growers*, No. 12-cv-02724-LHK,
4 2013 WL 5487236, at n. 1 (N.D. Cal. Oct. 2, 2013) (granting Plaintiff’s request for judicial notice of
5 twenty-one exhibits, including images available on publicly available websites, internal citations
6 omitted). *See also, e.g., In re: Google Inc.*, No. 13-MD-02430-LHK, 2013 WL 5423918 (N.D. Cal.
7 Sept. 26, 2013); *Finkelstein, M.D. v. AXA Equitable Life Ins. Co.*, 325 F. Supp. 3d 1061, 1066 (N.D.
8 Cal. 2018) (“Under the incorporation by reference doctrine, courts are permitted to look beyond the
9 pleadings without converting a Rule 12(b)(6) motion into a motion for summary judgment. Courts
10 may look into ... documents that are not physically attached to the complaint if the contents of the
11 document are referred to in the complaint and the authenticity of the documents is not questioned,”
12 internal citations omitted, but citing *inter alia Fraley v. Facebook*, 830 F. Supp. 2d. 785, 795 (N.D.
13 Cal. 2011)).

14 The above-listed materials are (or were) publicly available on the Internet and “can be
15 accurately and readily determined from sources whose accuracy cannot be reasonably questioned.”
16 Fed. R. Evid. 201(b). Moreover, the subject matter of the above-listed materials is referred to in and/or
17 implicated by the Complaint [D.E. 1] and/or the Motion to Dismiss [D.E. 20].

18 WHEREFORE, Plaintiff, Jason Fyk, respectfully requests that the Court (1) take judicial notice
19 of the materials referenced above, and (2) award any other relief that the Court deems equitable, just, or
20 proper.

1 Dated: December 7, 2018

2 Respectfully submitted,

3 **CALLAGY LAW, P.C.**

4 /s/ Jeffrey L. Greyber

5 **Jeffrey L. Greyber, Esq.**

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15 *and*

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17 **Constance J. Yu, Esq.**

18 SBN 182704

19 *cyu@plylaw.com*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 7, 2018, I electronically filed the foregoing documents with the Clerk of the Court by using CM / ECF. I also certify that the foregoing document is being served this day on all counsel of record via Notices of Electronic Filing generated by CM / ECF, and via emails to defense counsel of record.

/s/ Constance J. Yu
Constance J. Yu, Esq.

EXHIBIT 1

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21 FACEBOOK, INC.,

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Case No. 4:18-cv-05159-JSW

**DECLARATION OF JEFFREY L.
GREYBER, ESQ., IN SUPPORT OF
PLAINTIFF'S REQUEST FOR
JUDICIAL NOTICE**

HEARING: FEB. 1, 2019, 9:00 A.M.

BEFORE: JUDGE WHITE


LOCATION: OAKLAND, CT. 5, FL. 2

DECLARATION OF JEFFREY L. GREYBER, ESQ.

I, Jeffrey L. Greyber, Esq., declare as follows:

- (1) I am an attorney with Callagy Law, P.C., counsel for Plaintiff in the above-captioned case. I am admitted *pro hac vice* in this action and all of my licensure / admission spanning multiple jurisdictions is in good standing. I have personal knowledge of the facts stated herein, and I could and would competently testify to them if asked to as a witness.
- (2) Attached as Exhibit A of Plaintiff's December 7, 2018, Response in Opposition to Defendant's November 1, 2018, Motion to Dismiss ("M2D Response") is the true and correct text of Title 47, United States Code, Section 230. This law is available in and was obtained from the public domain, namely Cornell University's Legal Information Institute database.
- (3) Attached as Exhibit B of the M2D Response are true and correct illustrative screenshots of two of the businesses / pages at issue in this action. These businesses / pages were once available in the public domain and were saved by Fyk.
- (4) Cited throughout the M2D Response are web materials (*e.g.*, Wikipedia and Facebook website), news articles (*e.g.*, The NY Times, CNN, USA Today), newscasts (*e.g.*, interviews of Facebook's Tessa Lyons and Facebook's Mark Zuckerberg available on and obtained from YouTube), and Congressional testimony (*e.g.*, Mark Zuckerberg's testimony available on and obtained from YouTube). These materials are available in and were obtained from the public domain (*e.g.*, Google and YouTube).

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 7th of December 2018, in Boca Raton, Florida.



Jeffrey L. Greyber, Esq.
Counsel for Plaintiff